

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: September 6-7, 2006

Reference No.: 2.4a.  
Action Item

From: CINDY McKIM  
Chief Financial Officer

Prepared by: Bimla G. Rhinehart  
Division Chief  
Right of Way and Land Surveys

Subject: **RESOLUTIONS OF NECESSITY**

## **RECOMMENDATION:**

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19430, summarized below.

## **ISSUE:**

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution of Necessity, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure.

Moreover, the remaining issues with the property owner are that the project is not planned in a manner that is most compatible with producing the least private injury and the acquisition of this property isn't necessary for the project.

## **BACKGROUND:**

Discussions have taken place with the owner/attorney, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owners may subsequently be entitled. Adoption of the resolution will not interrupt our efforts to secure equitable settlement. In accordance with statutory requirements, the owner and her counsel has been advised the Department is requesting the resolution at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19430 - Elizabeth A. Mariner, et al.

03-Pla-65-PM 18.2 - Parcel 034391-1 - EA 333809.

Right of Way Certification Date: 10/01/07; Ready to List Date: 10/01/07. Expressway - construct four-lane expressway. Authorizes condemnation of land in easement for mitigation purposes.

Located near the unincorporated area of Lincoln on Wise Road near Dowd Road.

APN 021-020-015.

Attachments

## **SUMMARY OF ISSUES**

Elizabeth A. Mariner is the owner of the subject parcel located at Dowd Road to the east and south of West Wise Road in the city of Lincoln. The subject parcel (Parcel 034391-1) is approximately 159.09 acres. The area required is an easement acquisition for mitigation purposes for State Route (SR) 65, also referred to as the "Lincoln Bypass Project" in Placer County.

The Condemnation Panel Review Meeting was held at the Department's District 3 main office in Marysville on June 9, 2006. Brad Hirsch, attorney for Elizabeth Mariner, was present at the meeting.

The following is a description of the concerns that the property owner has expressed, and the Department's response:

### **Owner:**

The property owner contends that the preservation of vernal pool habitat, which is being required as mitigation for impacts to federally listed species, could be achieved without acquiring this property.

### **Department Response:**

Nine properties were considered as part of the vernal pool and swale environmental mitigation.

- Rockwell (purchased) and Mariner, Aitken Ranch, and Orchard Creek are the only viable habitats to mitigate project impacts to listed vernal pool species.

Considered but unavailable.

- AKT Development property is unavailable. Owner acquired property to mitigate housing development impacts.
- Air Force property will take 8 years to acquire.
- Wildlands, Inc. purchased the Air Force West property.
- Koshman Ranch owner granted an option to AKT Development.
- Soil type at Sheridan East isn't similar to project's impacted vernal pools.
- Toad Hill was purchased by private land developers for mitigation purposes.

### **Owner:**

The property owner maintains that additional vernal pools could be created on other mitigation parcels that have already been acquired for this project.

### **Department Response:**

United States Fish and Wildlife Services (USFWS) has stated that further creation of new vernal pools is not an acceptable alternative to protecting and preserving what little remains of this already established rare resource. Acquiring this property is the only feasible solution to meeting the USFWS requirements to preserve and protect large blocks of intact vernal pool habitat.

**Owner:**

The property owner contends that development restrictions could be placed on the property that would protect the wetlands and still allow the continued ownership by the Mariner family.

**Department Response:**

The Department has offered the property owners a conservation easement instead of a fee acquisition. This would allow the owner to retain fee title of the property.

**Owner:**

The property owner contends that acquisition of the property is not compatible with the greatest public good and the least private injury.

**Department Response:**

Acquisition of this property affects the least number of property owners by mitigating with high quality habitat on a smaller number of acres under one ownership, therefore providing the greatest public good and the least private injury.

**Owner:**

The property owner has requested the wetlands delineation prepared by the Department in an effort to create a private mitigation bank on the property.

**Department Response:**

Based on legal advice, the Department declined the request because the wetland delineation prepared for this property is integral to the valuation of mitigation property. On August 3, 2006, as a measure of good faith, the Department provided Brad Hirsch a copy of an aerial photograph marked showing the wetlands on the Mariner property.

## **Resolution of Necessity Appearance Fact Sheet**

<b><u>PROJECT DATA:</u></b>	03-Pla-65-PM 18.2 Expenditure Authorization (EA): 333809
<u>Location:</u>	Proposed State Route (SR) 65 in Placer County near the city of Lincoln.
<u>Limits:</u>	In Placer County on SR near the city of Lincoln from just south of Industrial Avenue to just south of Bear River.
<u>Cost:</u>	\$15,000,000 Mitigation Cost (as of May 2005) \$67,640,000 Right of Way Cost \$66,000,000 Capital Construction Cost
<u>Funding Source:</u>	State Funds
<u>Number of Lanes:</u>	Existing: SR 65 is a two-lane highway with no access control. Proposed: A four-lane freeway and two-lane expressway and includes right-of-way acquisition for an ultimate 4-lane freeway consisting of 4-lanes throughout the project limits.
<u>Proposed Major Features:</u>	Interchanges: Partial Interchange
<u>Traffic:</u>	Existing 2004: Average Daily Traffic (ADT) - 19,800 Proposed 2025: ADT- 35,000
<b><u>PARCEL DATA:</u></b>	
<u>Property Owner:</u>	Elizabeth A. Mariner
<u>Parcel Location:</u>	Assessor's Parcel Number 021-020-015 Located at Dowd Road to the east and south of West Wise Road.
<u>Present Use:</u>	Grazing and farming
<u>Zoning:</u>	Agricultural (AG)
<u>Area of Property:</u>	Parcel 034391-1 – 159.09 acres
<u>Area Required:</u>	Parcel 034391-1 – 159.09 acres (conservation easement)

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) met at the District Office in Marysville on June 9, 2006. The Panel members consisted of Donald Grebe, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Yvonne Von Brauchitsch, Department Sacramento Legal Division; John Steele, Department HQ's Division of Design; and Dennis Wilson, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Mr. Brad Hirsch, attorney of record for the property owner was also present at the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

### **NEED FOR THE PROJECT**

The purpose of the highway improvement project is to relieve congestion and improve safety on existing State Route (SR) 65 in the vicinity of the city of Lincoln and provide for a regional traffic solution to accommodate projected traffic volumes for the year 2025. This project is also referred to as the "Lincoln Bypass Project".

Continuing planned growth in south Placer County and the Sacramento Valley has resulted in the need for a new and improved SR 65 corridor, which would alleviate congestion in the city of Lincoln while providing for improved inter-regional traffic flow. The existing facility through Lincoln is a "Main Street" highway that will not serve the ultimate transportation needs of the region. Due primarily to congestion, the collision rate in downtown Lincoln is higher than the Statewide average rate for this type of facility. SR 65 south of Lincoln and within downtown Lincoln currently exceeds available capacity.

### **PROJECT PLANNING AND LOCATION**

The Department and the Federal Highway Administration (FHWA) propose to construct a four-lane freeway on a new alignment to the west of the city of Lincoln. The preferred alignment begins approximately 1.0 mile south of the city of Lincoln, extends to the west around Lincoln Airport, and rejoins existing SR 65 approximately 0.1 mile south of Bear River. The total length of the project is approximately 12.8 miles. A Draft Environmental Impact Report was circulated between November 21, 2000 and January 15, 2001. A Final Environmental Impact Report was approved May 25, 2006.

The Department and FHWA determined that the preferred alignment is the Least Environmentally Damaging Practicable Alternative (LEDPA). The U.S. Environmental Protection Agency (USEPA) concurred on July 9, 2003, and the U.S. Army Corps of Engineers (Corps) concurred on August 8, 2003. The impacts to vernal pools, wetlands, and natural communities and agricultural land are comparable for all the alternatives.

### **NEED FOR SUBJECT PROPERTY**

The United States Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) for the proposed Lincoln Bypass Project on February 2, 2005 that concluded the project, with its associated mitigation, is not likely to jeopardize the continued existence of the valley elderberry longhorn beetle or the vernal pool fairy shrimp and the vernal pool tadpole shrimp collectively referred to as vernal pool crustaceans (VPC). The BO also concluded the project would not destroy or adversely modify critical habitat for VPC.

The BO's terms and conditions regarding the associated mitigation require the Department to protect a total of 108 wetted acres of VPC habitat in perpetuity including 98 acres of existing and 10 acres of created habitat. The BO specifies the three locations proposed by the Department for acquisition and protection of the required habitat including the Aitken Ranch, the Rockwell-Mariner property (only the Mariner portion is the subject property), and the Orchard Creek Bank. A recent March 21, 2006 amendment to their BO reflects the revised amount of 48 acres of wetted vernal pools occurring on the Rockwell-Mariner parcels. The Mariner parcel has 13 wetted acres of vernal pools and the Rockwell portion has 35 wetted acres, but five acres of the Rockwell pools are no longer part of the proposed endangered species mitigation. Portions of the Rockwell and Mariner properties (containing five acres of vernal pools) will fulfill the Department's LEDPA commitment to EPA by purchasing a conservation easement over portions of these adjoining properties.

The subject property was identified in 2004 as a second vital site needing protection due to the property's particular location and apparent high concentration of undisturbed VPC habitat. As a conservation measure, the Department acquired 531.04 acres of property adjacent (Rockwell) to the subject property to preserve its significant existing habitat values. The Rockwell Family Trust retained a leveled 101.70 acres section of their 632.74 acre ranch in the northwest corner for agriculture. As a result, the site would also be protected from any future development.

The subject property is unique in regards to the size of the area that is relatively undisturbed and the amount of vernal pools on it. It is also an essential element of the wildlife corridor that is being pursued by the Placer Legacy. Placer Legacy is an agency which seeks to protect open space in Placer County and may be considered a potential partner in managing the Department's conservation easements in western Placer County.

### **PROJECT IMPACTS**

The project will impact wetlands and other regulated waters, riparian forest, oak woodland, and grassland habitats. The Mariner parcel, in conjunction with the adjacent, already-purchased Rockwell property, will contribute to reducing the vernal pool and swale impacts caused by the project and summarized in the following table.

<b>Habitat Type</b>	<b>Impact</b>	<b>Proposed Mitigation Strategy</b>	<b>Proposed Preservation/Creation/Restoration</b>
Vernal pools & Swales	Direct 10.35 ac	<u>Permanent impacts</u> Preservation of vernal pool wetlands at a 3:1 ratio Total 31.75 ac  Creation at a 1:1 ratio Total 10.35 ac	Preservation for permanent and indirect impacts  11.06 ac at Aitkens <b>43.22 ac at R/M*</b> 7.53 ac at Orchard Creek
	Indirect 30.05 ac	<u>Indirect Impacts</u>  Preservation of vernal pool wetlands at a 1:1 ratio. Total 30.05 ac	Total: 61.81 (31.75+30.05) Creation for permanent impacts Creation of 10.35 ac at Aitkens

- R/M is Rockwell/Mariner properties

### **PROPOSED MITIGATION**

The overall goal of the mitigation program is to offset project impacts to: 1) jurisdictional wetlands and other waters in terms of area and functions and values; 2) oak forest and woodlands and individual oak and other trees; and 3) State and/or federally listed special status species. This goal will be achieved through the following three mitigation program elements: 1) permanent preservation of existing high quality vernal pools and other wetlands, riparian habitats, oak woodlands, and grasslands; 2) restoration of habitats temporarily impacted during project construction; and 3) compensation through creation of new wetlands, riparian habitats, oak woodlands, and other habitats with functions and values comparable to or better than the impacted areas.

The Department has investigated a number of options for mitigating impacts to wetlands and riparian habitats. The options considered fall into four categories: 1) use banked credits at the Department's Beach Lake Mitigation Bank in Sacramento County; 2) purchase mitigation credits from an existing or proposed private mitigation bank that serves the project area; 3) purchase land or conservation easements over land with high quality resources and preserve it in perpetuity; and 4) use surplus lands purchased for construction of the Lincoln Bypass as mitigation areas.

After consideration of these mitigation options, the Department determined that the most effective mitigation approach included the following elements:

- Perform on-site restoration of marsh and riparian habitats temporarily impacted during project construction and create on-site marsh habitat at the Yankee Slough crossing.

- Enter into an agreement with Wildlands, Inc., to purchase a 317 acres multi species conservation area, Aitken Ranch. (Completed)
- Purchase fee title or conservation easement over the Rockwell/Mariner Ranch property (including both the Rockwell and the Mariner parcel). The Rockwell/Mariner Ranch includes approximately 48 acres of vernal pools and swales, but now the Department is offering 43 acres of vernal pools to the USFWS since the Department is reserving five of these wetted acres to be included as part of the Department's LEDPA requirements.
- Purchase Orchard Creek vernal pool credits. The Department exhausted all the remaining credits.

Acquisition of right of way will be required for the Lincoln Bypass Project as well as the subject property to preserve existing vernal pool habitat to meet the project's mitigation requirements under the Federal Endangered Species Act. In order to comply with the terms and conditions in the USFWS's BO for the Lincoln Bypass Project, the subject property needs to be acquired and protected to ensure the preservation of the important vernal pool habitat on the property.

The subject property is one of the last intact vernal pool and grassland complexes remaining in western Placer County. As such, the property has the potential to serve as a critical element for mitigating the project's need for the protection of vernal pool and grasslands in western Placer County.

Besides the subject property, two other large properties in Placer County are also needed to fulfill the required amount of vernal pool mitigation for the Lincoln Bypass Project. One of these properties is the adjoining Rockwell property. The Department has purchased approximately 531.04 acres of this property. The other mitigation site for this project is the 317 acres Aitken Ranch, which was a turnkey mitigation parcel, secured with a conservation easement in 2002. Also 7.53 acres were purchased from the Orchard Creek mitigation bank.

The 159.09 acres subject property, which contains vernal pools and upland, provides connectivity between neighboring Auburn Ravine grassland vernal pool area to the south and the Coon Creek floodplain and riparian area to the north. Without the subject property, maintenance of an unfragmented, inter-connected reserve system will be difficult to achieve -- the result of which affects migratory pathways for wildlife, continuity, dispersal, genetic integrity, and overall biodiversity.

Given the high quality and undisturbed condition of the vernal pool complexes known to exist on the subject property and adjacent Rockwell, it is expected that many federal and State protected species, both plant species and the fairy shrimp and the tadpole shrimp, occur on the property. In addition, the upland areas would support federal and State protected species, such as the threatened Swainson's hawk and other grassland birds and mammals.

In Placer County, urbanization, industrial development, and infrastructure construction have resulted in substantial losses of vernal pool ecosystems. The greatest threat to this rare landscape



feature is conversion to high-density development. Effective conservation and recovery must focus on the protection of large intact complexes of existing pools, such as those found on the subject property.

The Department has researched other mitigation site options. The Department staff met with both the city of Lincoln and Placer County to identify potential mitigation sites within Placer County. Sheridan East and Orchard Creek mitigation banks did not have any additional vernal pool credits left to purchase. All other approved mitigation banks within the area have also been exhausted. There are no other banks within the vicinity of the project that provide the extensive high quality habitat values of the subject property.

## **DISCUSSION**

The subject property is the last remaining intact large area containing relatively undisturbed vernal pools and uplands in western Placer County. This property also provides for a contiguous corridor that connects the Coon Creek watershed with the Auburn Ravine watershed. Habitat fragmentation may lead to reduced movements and impaired dispersal of young, and may result in small, isolated populations of some species. Over time, this may even lead to elimination of some species within the immediate area.

The success of the Lincoln Bypass vernal pool mitigation rests upon the acquisition of the subject property. There are no other properties available in the vicinity of the project that can provide as high a level of habitat quality as the subject property.

The BO's assertion that the project is not likely to jeopardize the continued existence of the vernal pool species is dependent upon the acquisition of the subject property due to the qualities mentioned above and the fact that there is simply no other property with those qualities in the vicinity of the project.

The following is a description of the concerns, which the property owner has expressed and the Department's response:

### **Owner:**

The property owner contends that the preservation of vernal pool habitat, which is being required as mitigation for impacts to federally listed species, could be achieved without acquiring this property.

### **Department Response:**

Nine properties were considered as part of the vernal pool and swale environmental mitigation.

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**Department Response:**

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**Department Response:**

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**Department Response:**

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**Owner:**

The property owner has requested the wetlands delineation prepared by the Department in an effort to create a private mitigation bank on the property.

**Department Response:**

Based on legal advice the Department declined the request because the wetland delineation prepared for this property is integral to the valuation of mitigation property. On August 3, 2006, as a measure of good faith, the Department provided Brad Hirsch a copy of an aerial photograph marked showing the wetlands on the Mariner property.

**PARCEL DESCRIPTION**

The subject parcel, Parcel Number 034391-1, is identified as Assessor's Parcel Numbers 021-020-015. The subject parcel is 159.09 acres in size and zoned agricultural (AG). The eastern side of the subject property has frontage on Dowd Road and the property is a rectangular in shape. The subject property is undulating, creating a maze of vernal pool systems across the property; it has historically been used for livestock grazing.

There are no improvements with the exception of barbed wire fencing along the perimeter. There are two different soil types on the subject property, San Joaquin sandy loam and Alamo-Fiddymont complex. These are clay-based soils, which typically have a deeper layer of hardpan. Electricity is available to the site.

**STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

**PANEL RECOMMENDATION**

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

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DONALD E. GREBE, Chief  
Office of Project Delivery  
Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:

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RICHARD D. LAND  
Chief Engineer

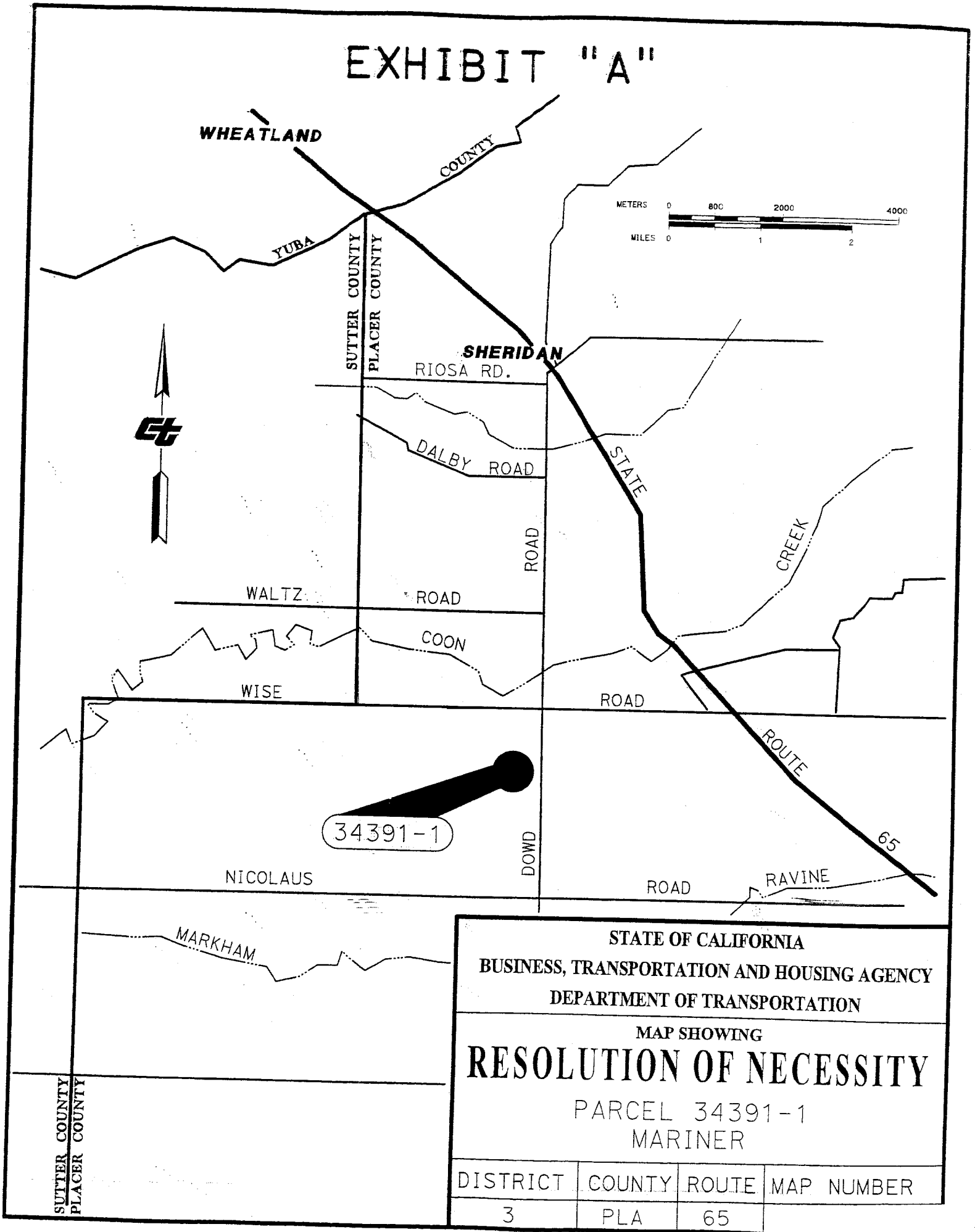
**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING  
HEARING ON June 9, 2006**

Donald Grebe, Headquarters Division of Right of Way and Land Surveys, Panel Chair  
Yvonne von Brauchitsch, Sacramento Legal Office Attorney, Panel Member  
John Steele, Headquarters Division of Design, Panel Member  
Dennis Wilson, Headquarters Division of Right of Way and Land Surveys, Panel Secretary

Brad Hirsch, Attorney for the Owner

Jody Jones, District 3 District Director  
Nesar Formoli, District 3 Design  
Debbie H. Moreno, District 3 Right of Way  
Mark Zgombic, Headquarters Right of Way  
Greg Lundblad, District 3 Right of Way  
Chris Collison, District 3 Environmental  
Winder Bajwa, District 3 Program Project Management  
Jess Avila, District 3 Program Project Management

# EXHIBIT "A"



STATE OF CALIFORNIA			
BUSINESS, TRANSPORTATION AND HOUSING AGENCY			
DEPARTMENT OF TRANSPORTATION			
MAP SHOWING			
<b>RESOLUTION OF NECESSITY</b>			
PARCEL 34391-1			
MARINER			
DISTRICT	COUNTY	ROUTE	MAP NUMBER
3	PLA	65	

# EXHIBIT "B"

34

35

36

T13N, R5E

WISE

ROAD

T12N, R5E

3

2

1

34391-1

10

11

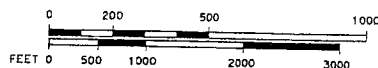
12

ROAD

DOWD

NICOLAUS

ROAD



STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION

MAP SHOWING  
**RESOLUTION OF NECESSITY**

PARCEL 34391-1  
MARINER

COUNTY	ROUTE	PM	MAP NUMBER
PLA	65	18.2	C-33380-2